

THE SENATE OF THE STATE OF TEXAS

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MIKE JACKSON

April 30, 2007

The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P. O. Box 12548
Austin, Texas 78711

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MAY 02 2007

OPINION COMMITTEE

FILE # ML-45210-07

I.D. # 45210

RQ-0587-GA

Re: Assessment and collection of capital recovery fees under Chapter 395 of the Texas Local Government Code

Dear Attorney General Abbott:

I would appreciate an Attorney General's opinion regarding the following discrepancy our city, the City of League City, has encountered.

On or about January 12, 1984, the City of League City, Texas, a home-rule municipality (the "City") adopted an ordinance providing for the assessment and collection of capital recovery fees for the "construction, design and inspection of General Benefit Facilities for water and wastewater." The amount of the fee charged has been increased a number of times since the adoption of the original ordinance through various ordinances amending the original ordinance. The most recent ordinance was passed in July of 2006.

On or about June 20, 1987, the Texas Legislature adopted Senate Bill 336 in order to establish guidelines to make local governments accountable for the assessment and use of capital recovery fees, or impact fees, and to require that local governments show that the amount of fees are reasonably related to the costs of providing services to new development and that the funds obtained from impact fees were spent on the projects for which they were raised.

The state law is now codified in Chapter 395 of the Texas Local Government Code. Section 395.016 entitled "Time for Assessment and Collection of Fee" defines the term "assessment" and includes various provisions for both the assessment and the collection of impact fees. The statute appears to distinguish between four (4) different categories: (1) fees adopted and land platted before June 20, 1987, (2) fees adopted before June 20, 1987 but land platted after that date, (3) fees adopted and land platted after June 20, 1997 and (4) land on which new development occurs without platting.

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SENATE DISTRICT 11

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As previously mentioned, the City adopted impact fees before June 20, 1987 and they have been amended several times since then as required by Chapter 395 (See §§ 395.052, 395.054 through 395.057). The City's first question is whether the assessment and collection of impact fees for land platted after June 20, 1987 is controlled by the provisions of §395.016(b), which subsection applies to impact fees adopted before June 20, 1987 and land platted after that date.

That section states, in part, as follows:

“(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation.”

The City's second question is as follows: if the assessment and collection of impact fees for land platted after June 20, 1987 is controlled by the provisions of §395.016(b), then is the City prohibited from assessing impact fees at a time other than “before or at the time of recordation” of a subdivision plat?

Your attention in this regard is greatly appreciated. Please do not hesitate to contact Holly Jeffcoat in my Capitol Office at 463.0111 if you have any questions regarding this matter.

Sincerely,



Mike Jackson
State Senator
District 11

cc: Mr. Dick Gregg, Jr., City Attorney for the City of League City
The Honorable Jerry Shults, Mayor of the City of League City